

STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 98-940

December 22, 1998

BANGOR HYDRO-ELECTRIC COMPANY
Request for Approval of Certificate
of Public Convenience Regarding
Amended Power Purchase Agreement with
New England Power

ORDER

WELCH, Chairman; NUGENT and DIAMOND, Commissioners

I. SUMMARY

In this Order, we issue a Certificate of Public Convenience and Necessity allowing Bangor Hydro-Electric Company (BHE) to amend a purchase power agreement with New England Power (NEP), a subsidiary of New England Electric System (NEES). The amendment alters the published source of market gas prices used to determine the purchase power price BHE pays to NEES under the terms of the contract.

II. BACKGROUND

In September 1994, BHE entered into a contract with NEES to purchase 30 MW of capacity and energy for a period of 5 years, concluding October 31, 1999. The rate paid by BHE was based on NEES's marginal costs. 35-A M.R.S.A. §§ 3131, 3133. The Commission issued a Certificate of Public Convenience and Necessity, and approved a stipulation agreed to by BHE, the Public Advocate (OPA), and the Commission's Advocacy Staff. *Bangor Hydro-Electric Company, Petition for Certificate of Convenience and Necessity to Purchase Generating Capacity and Energy from New England Power, Pursuant to 35-A M.R.S.A. § 3133 and Chapter 332 of Commissions Rules and Requests for Waivers*, Docket No. 94-356 (May 23, 1995).

In August 1998, NEES sold substantially all of its generating units that formed the basis for the contract price. BHE and NEES renegotiated the contract to accommodate this situation. The Commission issued a Certificate of Public Convenience and Necessity and approved a stipulation agreed to by BHE and OPA for a new contract that extends for the period September 1, 1998 through October 31, 1999. *Bangor Hydro-Electric Company, Request for Approval of Certificate of Public Convenience Regarding Amended Power Purchase Agreement with New England Electric Power*, Docket No. 98-699 (Oct. 20, 1998).

On November 25, 1998, BHE requested a certificate of public convenience and necessity pursuant to 35-A M.R.S.A. §3133 for an amendment to that contract. BHE desires to amend the Energy Charge provision of the contract, replacing the gas prices published in *Gas Daily* with the gas prices published in McGraw-Hill's *Inside F.E.R.C.'s Gas Market Report (Gas Market Report)* for use in the contracted formula that calculates the price BHE will pay NEES for purchased power. BHE additionally requested that the Commission waive the notice and filing requirements of Section 3133 and of Chapter 332 of the Commission's Rules by finding that good cause has been shown that application of these requirements is unnecessary, burdensome or impractical in this instance and that the underlying purposes of Section 3133 are not significantly impaired by the waiver.

On December 10, 1998, BHE submitted a stipulation agreed to by BHE and the Public Advocate, stating their support of the contract amendment and reiterating certain ratemaking provisions from earlier stipulations regarding this contract.

III. DISCUSSION AND DECISION

The contract contains a formula that calculates the energy portion of a monthly price that BHE will pay to NEES. The intent of the formula is to serve as a proxy for NEES's marginal energy cost during the initial years of the contract, when NEES was a fully integrated electric utility. The formula contains indices that link BHE's price to market gas prices, market oil prices and other historic prices. This formula was intended to cause minimal change to BHE's contracted price when NEES divested its generation assets. In addition, the presence of a published gas price in the formula allows BHE to engage in financial transactions that will hedge against future gas price uncertainty.

BHE asserts that, when it recently began implementing these hedging transactions, it learned that the financial community would not accept the gas prices published in *Gas World*. The financial community will, however, use the prices published in *Gas Market Report*.¹ Therefore, the use of *Gas Market Report* will improve BHE's ability to manage its financial risks. BHE requested of NEES that the contract be amended to specify the more effective document, and NEES agreed. BHE asserts that the effect of the amendment on the price it pays will be negligible. We find that the contract change is reasonable and therefore will grant BHE's request for a

¹ BHE asserts that *Gas Market Report* contains an average of recent days' natural gas prices paid by buyers during the month, for contracts for future purchases of baseload gas. *Gas Daily* publishes each day's gas prices, whether baseload or not, during the month.

Certificate of Public Convenience Regarding Amended Power Purchase Agreement for the amended contract.

Pursuant to 35-A M.R.S.A. § 3133(11), the Commission may waive the notice requirements when approving an amendment, extension or renewal of a contract for purchased power. Subsection 4(C)(1) of Chapter 332 of the Commission's Rules allows waiver if good cause is shown that application of the notice requirements is unnecessary, burdensome or impractical and that the underlying purposes of Section 3133 are not significantly impaired. Because the amendment does not affect the intent of the contract and appears to have a negligible effect on revenues, we find that no other parties will be affected by the amendment. Therefore, we waive the notice requirements as being unnecessary, and we find that the underlying purposes of the notice requirement provisions of Section 3133 are not significantly impaired.

Accordingly, we

O R D E R

1. That the Stipulation agreed to by Bangor Hydro-Electric Company and the Public Advocate filed on December 10, 1998, and attached to this Order as Attachment 1, is approved;

2. That Bangor Hydro-Electric Company's request for a waiver of the notice and filing requirements in 35-A M.R.S.A. § 3133 and Chapter 332 is granted; and

3. That a Certificate of Public Convenience and Necessity is issued for the power purchase between New England Power and Bangor Hydro-Electric Company as described in the November 25, 1998 letter and the included term sheet, subject to the conditions in the Stipulation.

Dated at Augusta, Maine, this 22nd day of December, 1998.

BY ORDER OF THE COMMISSION

Dennis L. Keschl
Administrative Director

COMMISSIONERS VOTING FOR: Welch
 Nugent
 Diamond

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S.A. § 9061 requires the Public Utilities Commission to give each party to an adjudicatory proceeding written notice of the party's rights to review or appeal of its decision made at the conclusion of the adjudicatory proceeding. The methods of review or appeal of PUC decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 1004 of the Commission's Rules of Practice and Procedure (65-407 C.M.R.110) within 20 days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought.
2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within 30 days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S.A. § 1320 (1)-(4) and the Maine Rules of Civil Procedure, Rule 73 et seq.
3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S.A. § 1320 (5).

Note:The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.